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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re MICHAEL S., a Person Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ELIZABETH N.,

Defendant and Appellant.

D054993

(Super. Ct. No. J511135)

APPEAL from a judgment of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Reversed in part and remanded with directions.

Elizabeth N. appeals following the six-month review hearing in the dependency case of her son Michael S. Elizabeth contends the court did not conduct the inquiry and order the notice required by the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and the court erred by finding there had been a reasonable inquiry and that ICWA

did not apply. Elizabeth requests we reverse all of the six-month review findings and orders or, alternatively, reverse the ICWA findings with directions to make further ICWA inquiry and, if the inquiry shows that Michael may be an Indian child, order that ICWA notice be provided. The San Diego County Health and Human Services Agency (the Agency) concedes there was not an adequate inquiry, requiring a limited remand for a proper inquiry and, if necessary, ICWA notice. Elizabeth's counsel, Michael's counsel, and the Agency's counsel have filed a stipulation for immediate issuance of the remittitur, which we accept. (Cal. Rules of Court, rule 8.272(c)(1).)

### BACKGROUND

In July 2008, just days after Michael's birth, the Agency filed a dependency petition alleging Elizabeth abused methamphetamine and THC. Michael was detained in foster care. At the detention hearing, the court deferred ruling on ICWA.

On July 18, 2008, Elizabeth told the Agency she was not a member of an Indian tribe, she did not have Indian heritage, she did not believe her family had any Indian heritage, and she had no reason to believe Michael's father was a member of a tribe or eligible for membership. The same day, Michael's maternal aunt told the Agency she did not believe there was any Indian heritage in the family, she had no reason to believe Michael was eligible for membership in a tribe, and Elizabeth was not a member of a tribe. On August 12 the court found ICWA did not apply.

On August 13, 2008, Elizabeth completed a Parental Notification of Indian Status form (Judicial Council Forms, form ICWA-020). On the form she stated she might have Apache ancestry, Michael's maternal great-grandfather (whom Elizabeth identified by

name) is or was a member of the Apache tribe, and Michael might be a member or eligible for membership in that tribe. On August 13 the court deferred ruling on ICWA and directed Elizabeth "to complete the detailed ICWA form (ICWA-030)."

On October 7, 2008, the court entered a true finding on the petition, declared Michael a dependent, and ordered him placed in foster care. There was no mention of ICWA at the hearing and the record does not contain any further ICWA inquiry.

According to the Agency's six-month review report, Elizabeth denied any Indian heritage "[a]t each contact" and said no one in her family lived on a reservation or participated in Indian activities. Michael's father also denied any Indian heritage and said neither he nor any members of his family were enrolled members in any tribe, lived on a reservation, or participated in Indian activities. At the March 23, 2009, six-month review hearing, the court found a reasonable ICWA inquiry had been made and ICWA did not apply. The court terminated Elizabeth's reunification services, continued services for Michael's father, and set a 12-month review hearing.

## DISCUSSION

Considering Elizabeth's statements regarding her possible Apache heritage and the absence of any reference in the record to an inquiry into those statements, the court erred by finding there had been a reasonable inquiry and that ICWA did not apply. We reverse the ICWA findings and remand to the juvenile court for a proper ICWA inquiry, a finding whether ICWA applies, and, if necessary following the inquiry and finding, for ICWA notice and further proceedings in compliance with ICWA. (*In re A.B.* (2008) 164 Cal.App.4th 832, 839; *In re Francisco W.* (2006) 139 Cal.App.4th 695.)

## DISPOSITION

The ICWA findings are reversed. This case is remanded to the juvenile court with directions to conduct a proper ICWA inquiry, determine whether ICWA applies, and, if found to apply following the inquiry and determination, order ICWA notice and conduct any further proceedings in compliance with ICWA. The remittitur is to issue forthwith.

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McDONALD, J.

WE CONCUR:

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NARES, Acting P. J.

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HALLER, J.